The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 45

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS G. WOOLSTON

Appeal No. 2003-1088
Application No. 09/253,014

HEARD: December 10, 2003

Before HAIRSTON, JERRY SMITH, and LEVY, Administrative Patent Judges.

LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 11-25, 33-55, 64-99 and 133-218, which are all of the claims pending in this application.

BACKGROUND

Appellant's invention relates to computer-implemented methods and systems for conducting auctions on the Internet. An understanding of the invention can be derived from a reading of exemplary claim 11, which is reproduced as follows:

11. A computer-implemented method for conducting auctions on the internet, the method comprising:

receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for auction, the information received from the seller including (i) a designation of a category, selected from a list of categories, under which the item for auction is to be listed, and (ii) input relating to scheduling an auction for the item;

processing at least a portion of the received information into a presentation format by a database-to-presentation format formatting program, the presentation format including an indication of the category of the item for auction;

based at least in part on the received auction scheduling input, conducting an auction for the item over the Internet by presenting the presentation format to a plurality of potential bidders;

receiving at the host computer at least one bid on the auctioned item from a bidder; and

receiving at a host computer payment information from the bidder.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Keithley et al. (Keithley)	5,584,025	Dec. 10, 1996 (effectively filed: Oct. 29, 1993)

Salmon et al. (Salmon)	5,592,375	Jan. 7, 1997 (filed Mar. 11, 1994)
Debenedictis et al. (Debenedictis)	5,625,823	Apr. 29, 1997 (effectively filed: Jul. 22, 1994)

Sharp, "From Army Knives to Gold Coins, Collectors Attend 'On-Line' Auctions", Memphis Business Journal, v.8, n.10, July 28, 1986, p. 10

Wright, et al., (Wright), "Is it Time to Travel the Auction Route?" Real Estate Today", v. 24, n.6, July 1991, p. 46(5)

"Internet Providers Take Next Step Toward Electronic Commerce," Electronic Marketplace Report, v. 8, No. 24, Dec. 20, 1994

Claims 148-151, 154-157, 160-163, 166-169, 172-175, 178-181, 184-187, 190-193, 196-199, 202-205, and 213-216 stand rejected under 35 U.S.C. § 112, first paragraph[1], as containing subject matter which was not described in the specification in such a way as to convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 11, 13, 16, 18-23, 33, 35, 39-41, 43-45, 49, 50, 54, 55, 64-70, 74-85, 90, 93-96, 133-146, and 148-218 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Salmon in view of Sharp and Wright.

[1] In the final rejection, claims 152, 158, 164, 170, 176, 182, 188, 194, 200, 206, and 217 were additionally rejected under 35 U.S.C. § 112, first paragraph. However, the rejection of these claims under 35 U.S.C. § 112, first paragraph, has been withdrawn by the examiner (answer, page 20).

Claims 12, 14, 15, 17, 24, 25, 34, 36-38, 42, 46-48, 51-53, 71-73, 86-89, 98 and 99 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Salmon in view of Sharp and Wright, and further in view of "Internet Providers Take Next Step Toward Electronic Commerce."

Claims 85, 91, 92 and 97 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Salmon in view of Sharp and Wright, and further in view of Debenedictis.

Claim 147 is rejected under 35 U.S.C. § 103(a) as unpatentable over Salmon in view of Sharp and Wright, and further in view of Keithley.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 35, mailed September 10, 2002) for the examiner's complete reasoning in support of the rejections, and to appellant's brief (Paper No. 33, filed April 15, 2002) and reply brief (Paper No. 39, filed November 18, 2002) for appellant's arguments thereagainst. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR 1.192(a).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of lack of written description and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

Upon consideration of the record before us, we reverse. We note at the outset that as noted by appellant (reply brief, page 1) the examiner (answer, page 6) misstates appellant's grouping of the claims.

We begin with the rejection of claims 148-151, 154-157, 160-163, 166-169, 172-175, 178-181, 184-187, 190-193, 196-199, 202-205, and 213-216 under 35 U.S.C. § 112, first paragraph. The description requirement exists in the first paragraph of 35 U.S.C. § 112 independent of the enablement (how to make and how to use) requirement. Where no prior application is relied upon, the description requirement is that the invention claimed be described in the specification as filed. As such, a rejection on

the description requirement is tantamount to a new matter rejection. The written description requirement serves "to ensure that the inventor had possession, as of the filing date of the application relied on, of the specific subject matter later claimed by him; how the specification accomplishes this is not material." In re Wertheim, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). In order to meet the written description requirement, the appellant does not have to utilize any particular form of disclosure to describe the subject matter claimed, but "the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed." In re Gosteli, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Put another way, "the applicant must . . . convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention." Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). Finally, "[p]recisely how close the original description must come to comply with the description requirement of section 112 must be determined on a case-by-case basis." Eiselstein v. Frank, 52 F.3d 1035, 1039, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995) (quoting Vas-Cath, 935 F.2d at 1561, 19 USPQ2d at 1116).

We note at the outset that the examiner does not refer to any specific claim or claims in the group of claims rejected uner 35 U.S.C. § 112, first paragraph, but rather states (answer, page 4) that the "[c]ited portion of the specification does not clearly provide support for the seller inputting auction duration, start/end time, immediate start, or indication that the auction is to be invoked by the seller manually. Please provide specific portions of the specification which support these new claims or cancel above claims." On page 20 of the answer, the examiner withdraws the portion of the rejection under 35 U.S.C. § 112, first paragraph, with respect to manual invoking of the auction process.

Appellant asserts (brief, page 25) that the specification (page 18) recites that a user may schedule the consignment node to execute the auction, and argues that an artisan would understand the term "schedule" to encompass time-related parameters such as start/end times, duration and the like. Appellant (brief, page 27) additionally points to the passage of page 10 that recites: "[t]he consignment node user arranges by invoking the appropriate consignment node program a time and date for an electronic auction. ... For example, a pawn shop operator

of a consignment node may have several Rolex watches he wishes to auction with reserve this Saturday night at 7:00p.m."

From our review of the specification, we find that in addition to the portions of the specification relied upon by appellant, that the specification additionally recites (page 11) that during an auction, if no higher bid is received for a predetermined amount of time, the auctioning of the particular product is closed. From the disclosure of scheduling the auction, closing the auction when no further bids are received, and programming the time and date for the auction, we find that the originally filed disclosure reasonably conveys to an artisan that the seller may input information relating to the start/end time, immediate start and duration of the auction. Although we agree with the examiner that the specific language of these features do not appear verbatim in the specification, there is no requirement under 35 U.S.C. § 112, first paragraph, that the terms in the claims exactly appear in haec verba in the specification.

From all of the above, we find that the examiner has failed to establish a prima facie case of lack of adequate written description of the claimed invention. Accordingly, the rejection

of claims 148-151, 154-157, 160-163, 166-169, 172-175, 178-181, 184-187, 190-193, 196-199, 202-205, and 213-216 under 35 U.S.C. § 112, first paragraph, is reversed.

We turn next to the rejection of claims 11, 13, 16, 18-23, 33, 35, 39-41, 43-45, 49, 50, 54, 55, 64-70, 74-85, 90, 93, 96, 133-146, and 148-218 under 35 U.S.C. § 103(a) as unpatentable over Salmon in view of Sharp and Wright. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d

281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

The examiner's position (answer, page 5) is that Salmon teaches a method for conducting sales over the Internet comprising receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for sale, and including a designation of a category. Salmon processes the information into a presentation format including an indication of the category of an item and a product ID. The examiner additionally asserts (id.) that Salmon additionally receives information from the seller relating to a subcategory

for the item and a verbal and/or graphical description of the item. Turning to Sharp, the examiner asserts that Sharp teaches an on-line auction which accepts messages concerning collectibles for sale from participants. The examiner asserts (answer, page 6) that it would have been obvious to have used the on-line auctioning of Sharp as a replacement of the sales in Salmon "since the sellers have a possibility of receiving more money than the asking price or base price for the items thereby providing incentive to users to choose auctioning over brokering." The examiner additionally argues (id.) that in the alternative, it would have been obvious to have used the buyers and sellers interfaces of Salmon in the system of Sharp "since the system of Salmon would have provided an automated system for inputting information into the database of Sharp and would have provided a more enhanced auctioning system by providing users with more information in terms of graphics/multimedia thereby promoting use by the public."

Turning to Wright, the examiner asserts that Wright teaches accepting input relating to scheduling an auction and teaches that the seller includes a price of the item (minimum reserve or bid) and advertising. The examiner's position is that it would have been obvious to have allowed the seller to set the

scheduling of the auction and conducted the auction based on the schedule, in the systems of Salmon and Sharp. The examiner continues (answer, pages 6 and 7) by making fifteen consecutive assertions of what the examiner considers to have been obvious to an artisan, for none of which does the examiner point to any teaching in the references for support for the examiner's position. In none of these fifteen assertions of obviousness does the examiner specifically refer to any claim (or claims) of the more than 100 claims included in this ground of rejection.

Appellant asserts (brief, pages 7-9) that the unsupported and conclusionary opinions of the examiner fail to establish a prima facie case of obviousness of the claimed invention, and that the examiner's subjective belief and unknown authority for asserting motivation is improper. Appellant further argues (brief, pages 9 and 10) that the examiner's alternative motivation for combining the teachings of Salmon and Sharp is a hindsight reconstruction to piece together references using appellant's own claims as a blueprint, and that the PTO must point to objective teachings in the record to suggest the desirability of the combination. It is further argued (brief, page 15) that the claimed computer-implemented Internet auction

initiated by scheduling information received from the seller is not disclosed or suggested by the references.

With respect to Salmon, appellant asserts (brief, pages 15-17) that Salmon is directed to a knowledge-based system that helps buyers with the decision-making process, and that Salmon makes no mention of on-line auctions or any other exchange for actually transacting electronic commerce. Appellant points out that Salmon does not disclose how a final transaction would be achieved, how goods would be paid for, shipped, etc. It is further argued (brief, page 17) that Salmon fails to disclose conducting auctions on the Internet based at least in part on scheduling information received from the seller.

With respect to Sharp, appellant argues (brief, page 17) that the so-called "on-line" auction is conducted in part by receiving E-mail messages from buyers and sellers. Appellant argues that Sharp fails to disclose or suggest conducting auctions on the Internet in which a host computer receives input from a seller relating to scheduling an auction, and then uses that information, at least in part, for conducting an auction over the Internet. Appellant further asserts (brief, page 18) that the PTO is mistaken in asserting that the "auctioning" in Sharp is interchangeable with the "brokering" allegedly disclosed

in Salmon. It is argued (id.) that an artisan would have no motivation to substitute Sharp's "auction" for the "brokerage" of Salmon because the two represent an apples-oranges comparison. Moreover, appellant argues (brief, page 19) that Sharp requires human intervention to maintain security and integrity of the auctions, because messages received form sellers are kept private until they are read and transferred to the network. In addition, in Sharp, the coins submitted by sellers are checked for authenticity and accuracy of the asking price before they are transferred to the auction part of the database.

With respect to Wright, appellant argues (brief, pages 20 and 21) that Wright fails to cure the deficiencies of Sharp and Salmon. Although Wright allows the seller to set the day of the auction, Wright fails to disclose or suggest a computer-implemented method for conducting auctions on the Internet, in which the computer system receives input from the seller relating to scheduling the auction, and then uses that information, at least in part, for conducting an auction for the item over the Internet. Appellant further argues (brief, page 21) that the PTO has failed to identify any legally proper basis for combining Wright with the other references because the only motivation provided (providing sellers with more control and accommodating

their needs) is classic hindsight and lacks support in the evidentiary record.

From our review of Salmon, we find that Salmon is directed to a system for brokering goods and services (col. 1, lines 8 and 9). The invention provides for a computer-implemented system for facilitating any transaction where review of diverse information is part of a buyer's decision-making process (col. 1, lines 18-24), by providing an expert system-based, networked computer system. The system includes buyers and sellers interfaces. The seller's interface allows sellers to input information into the database. The buyer's Interface provides a knowledge-based interactive protocol, enabling the buyer to select and review descriptive information in the database (col. 1, lines 33-37). The knowledge-based protocol includes an approximate-comparison system, for presenting to the buyer, goods or services that approximately match selection criteria entered into the buyer's Interface (col. 1, lines 63-66). The compiled information is presented to the buyer with the assistance of an expert system that selects relevant information in accordance with selected criteria (col. 2, lines 9-11). Uses of the system include purchase or rental of real estate, automobiles, etc.; purchase or rental of consumer goods; hiring of personnel, and exploration of

travel, colleges, business opportunities, etc. As shown in figure 1, the buyer's interface 500 assists the buyer in selecting likely product profiles from database 200, and in evaluating and comparing products to make a purchase decision. In the example of personnel search, the candidate is interviewed by the seller's Interface 300 to supply information for his Product Profile (col. 3, lines 22-24 and 28-30). With further reference to the personnel search example, as shown in figures 2a-2d, the Profile Template includes information such as the candidate's name 204, address 206 and phone number 208, last position 210, compensation 212, and education 214 (col. 3, line 63 through col. 4, line 3). Figures 2d-2f show how information describing the candidates might be stored in table 260, a table 270 of Functions, and table 280 of Skill Set (col. 4, lines 58-61). Referring to figure 3b, the seller's Interface presents a series of questions such as questions regarding the candidate's most significant accomplishment in their previous job (col. 6, lines 46-53). Referring to figures 4a-4c, the seller's Interface presents levels of expanded characteristics for more-detailed selection (col. 7, lines 8-10). Figure 7e shows profile charts for three candidates. Figure 7g shows a candidate resume. Figure 7j shows a score card displaying a numerical score for

each candidate for each characteristic of the Product Profile (col.12, lines 56-59). Figure 7m shows a Profile Summary and Action Plan for each of the candidates. In addition, an action log records the buyers scoring decisions, and any reasons for rejection. For example, the Action Log could report the number of candidates presented, and reasons for rejecting a large number of candidates (col. 13, lines 13-25). The Action Log is the basis for billing for system services, as both buyers and sellers pay a subscription fee for access to the system. Charges could also be made for connection time, database storage, etc. Each match that results in a completed transaction could also incur a charge to the buyer or seller (col. 13, lines 61-67). The Seller's or Buyer's Interface could be run on the seller's or buyer's personal computer in a standalone mode with a diskette mailed back to the buyer with Product Profile hits (col. 14, lines 14-19). It is also contemplated that the system could be operated over the Ethernet, Wan, etc.

Turning to Sharp, we find that Sharp is directed to an "on-line" auction that is stored and operated on an IBM Personal computer AT, which has been programmed to carry out the tasks needed to conduct on-line auctions and straight sales. The auctions are for coins and other collectibles. The system is

accessible to anyone with a computer terminal and a modem. In operation, users enter their bids in the form of messages. A toll-free number connects the user with the database for a one time fee and a monthly charge. Messages are completely private until Mintz or Blankley read them and transfer them to the network. The database has several different "auctions" or "trading floors." Collectors send messages offering their coins, then ship the coins in advance of the auction date. Blankley has them checked for authenticity and for the accuracy of the asking price. They are then stored in a bank vault and the message is transferred onto the auction portion of the database. If the coin is not acceptable, it is returned to the seller. The Company has advertised in USA Today.

Turning to Wright, we find that Wright is directed to real estate auctions. Wright discloses that with an auction, sellers can set the day they would like their property to sell. Wright discusses the differences between sealed-bid, reserve and absolute auctions. Wright additionally discloses making bidders aware through the use of brochures, advertisements and announcements. We find no disclosure in Wright relating to computer-implemented auctions.

From the disclosure of Salmon, we agree with appellant (brief, pages 15-17) that Salmon is directed to a knowledge-based system for assisting a buyer in making decisions, and find no disclosure in Salmon relating to a computer-implemented auction.

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. In re Clay, 966 F.2d 656, 658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). Because Salmon is not directed to a computer-implemented auction and does not relate at all to the auctioning of goods, we find that Salmon is non-analogous art, unrelated to either appellant's field of endeavor i.e., computer-implemented auctions, or to any problem reasonably related to the problem that appellant has solved, i.e, conducting the auction, at least in part, based upon seller input relating to scheduling the auction.

From the disclosure of Sharp, we find that Sharp is analogous art because Sharp is related to the nationwide auctioning of collectible goods, in a system that is programmed on a computer, and is accessible to anyone with a computer and modem who pays to join the service.

From the disclosure of Wright, we find that Wright relates to auctioning of real estate, and is not directed to computer-implemented auctions. Thus, because Wright is directed to auctions of real estate, and is not directed to a computer-implemented auction, we find that Wright is non-analogous art unrelated to either appellant's field of endeavor or to any problem reasonably related to the problem that appellant has solved. Because Salon and Wright are non-analogous art, we find no teaching or suggestion that would have motivated an artisan to combine the teachings of these references with the disclosure of Sharp. In addition, while Sharp discloses an on-line auction, operated on a nationwide basis, Sharp relies upon Blankley and Mintz to review the messages before transferring them to the network. This is done for security purposes. In addition, in Sharp, users call the system and bid through the use of messages called in, and sellers ship their products for authentication and verification before they are listed in the system. Thus, sharp

does not disclose the use of seller input relating to scheduling the auction, for use, at least in part, in conducting the computer-implemented auction, as required by each of the independent claims 11, 20, 33, 40, 43, 49, 54, 55, 133, 146, and 212. In addition, with respect to the fifteen consecutive statements of obviousness made by the examiner, that we referred to, supra, the examiner's subjective assertions of what would have been obvious to an artisan is not a substitute for evidence in the record. See In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001), and In re Lee, 277 F.3d 1338, 1345, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). The deficiencies of the cited references cannot be remedied by general conclusions about what the examiner considers to essentially be basic knowledge or common sense to one of ordinary skill in the art. As the examiner's assessments (answer, pages 5 and 6) are not based on any evidence in the record, the examiner's unsupported opinion lacks substantial evidence support. To support the examiner's opinions of obviousness, the examiner needs to point to some concrete evidence in the record in support of these findings. To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise. See Baltimore & Ohio R.R. Co. v.

Aderdeen & Rockfish R.R. Co., 393 U.S. 87, 91-92 (1968) (rejecting a determination of the Interstate Commerce Commission with no support in the record, noting that if the Court were to conclude otherwise "[t]he requirement for administrative decisions based on substantial evidence and reasoned findings -- which alone make effective judicial review possible -- would become lost in the haze of so-called expertise").

From all of the above, we find that the examiner has failed to establish a prima facie case of obviousness of claims 11, 13, 16, 18-23, 33, 35, 39-41, 43-45, 49, 50, 54, 55, 64-70, 74-85, 90, 93-96, 133-146, and 148-218 under 35 U.S.C. § 103(a). Accordingly, the rejection of claims 11, 13, 16, 18-23, 33, 35, 39-41, 43-45, 49, 50, 54, 55, 64-70, 74-85, 90, 93-96, 133-146, and 148-218 under 35 U.S.C. § 103(a) is reversed.

In addition, with respect to the rejection of claims 12, 14, 15, 17, 24, 25, 34, 36-38, 42, 46-48, 51-53, 71-73, 85-89, 91, 92, 98, 99, and 147, for which the examiner additionally relies upon "Internet Providers Take Next Step Toward Electronic Commerce," Debenedictis, or Keithley, we reverse the rejection of these claims as these references fail to make up for the deficiencies of Salmon, Sharp and Wright. Although we find,

sua sponte, that figures 28-32 of Debenedictis relate to application of Debenedictis' invention to a computerized on-line auction, we find no disclosure in Debenedictis relating to the use of seller input regarding scheduling of the auction being used, at least in part, to conduct an auction. In addition, Keithley refers to use of his method of accessing industry specific information with auctions (col. 1, line 32); discloses the auctioning of real property (col. 6, lines 32-34); discloses allowing Real Estate Agents access to privileged information not available to the public, including notations entered into the file by listing agents, that relate to Auction Profiles (col. 8, lines 20-25); and auction information from property profile databases relating to auctions (col. 10, lines 58-64). However, we find no teaching or suggestion in Keithley relating to the use of seller input regarding scheduling of the auction being used, at least in part, to conduct an auction.

CONCLUSION

To summarize, the decision of the examiner to reject claims 148-151, 154-157, 160-163, 166-169, 172-175, 178-181, 184-187, 190-193, 196-199, 202-205, and 213-216 under 35 U.S.C. § 112, first paragraph is reversed. The decision of the examiner to reject claims 11-25, 33-55, 64-99, 133-218 under 35 U.S.C. § 103(a) is reversed.

REVERSED

KENNETH W. HAIRSTON)
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JERRY SMITH) BOARD OF PATENT
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